

# CRS Report for Congress

## Proposals for a New Foreign Service Compensation System in the 110<sup>th</sup> Congress

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Prepared for Members and  
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# Proposals for a New Foreign Service Compensation System in the 110<sup>th</sup> Congress

## Summary

Proponents of revisions in the Foreign Service compensation system point out that as increasing numbers of Foreign Service personnel are going to posts of increased hardship and danger, Foreign Service personnel serving abroad receive 20.89% less than their colleagues who are posted in Washington, D.C. due to the loss of locality pay when serving abroad. These proponents of revision maintain that this difference negatively impacts morale and assignment considerations, and eventually retention also. Both the 109<sup>th</sup> and 110<sup>th</sup> Congresses have considered proposals to eliminate this pay difference.

The American Foreign Service Association (AFSA) has been working for several years with congressional supporters to change the compensation system. Since FY2007, the George W. Bush Administration has requested funds to create a new performance-based compensation system for the Foreign Service and eliminate the pay differential. For FY2009, the Administration requested \$34.7 million for the first stage of a transition to pay equity. The Senate Appropriations Committee provided sufficient funding to meet the Administration's request in its appropriations bill, S. 3288, reported on July 18, 2008.

The "Foreign Service Overseas Pay Equity Act of 2008," H.R. 3202, as amended, would eliminate the pay differences over three years. This bill was referred to both the House Committee on Foreign Affairs (HCFA) and the House Committee on Oversight and Government Reform (HOGRA). HCFA reported the bill on July 16, 2008. An identical bill was introduced in the Senate, S. 3426, on August 1, 2008, and was referred to the Senate Committee on Foreign Relations (SFRC). The SFRC reported the bill, without amendments, on September 23, 2008.

The major difference between the Administration's proposal and the current legislation is that the Administration, while proposing to eliminate the pay difference over two years, also seeks to develop a new performance-based worldwide compensation system for the Foreign Service. H.R. 3202 and S. 3426 would eliminate the pay differences over three years without reference to developing a new performance-based system. AFSA states that the Foreign Service personnel system is already performance-based, and the pay adjustment proposals eliminate an unintended inequity. Others with concerns about the legislation, however, state this is basically a pay increase for the Foreign Service and question whether increases are needed because of the benefits and allowances Foreign Service personnel generally receive when posted abroad. This report discusses (1) the legislative background leading to a proposal to change the compensation system, (2) the current Foreign Service personnel system and why the Foreign Service views it as already performance-based, (3) an examination of why the Foreign Service and the Administration are both requesting that Congress change the compensation system, (4) an examination of H.R. 3202 and S. 3426, the "Foreign Service Overseas Pay Equity Act of 2008," and (5) some issues that Congress might be asked to consider. This report may be updated.

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# **Proposals for a New Foreign Service Compensation System in the 110<sup>th</sup> Congress**

## **Most Recent Legislative Developments**

The “Foreign Service Overseas Pay Equity Act of 2008,” H.R. 3202, as amended, would eliminate, over three years, the pay difference between those Foreign Service personnel serving in Washington, D.C. and those serving abroad who are not eligible for a locality pay adjustment. This bill was referred to both the House Committee on Foreign Affairs (HCFA) and the House Committee on Oversight and Government Reform (HOGRA). On July 16, 2008, HCFA favorably reported the bill by voice vote. On August 1, 2008, an identical companion bill was introduced in the Senate, S. 3426, and referred to the Senate Committee on Foreign Relations (SFRC). On September 23, SFRC considered and reported S. 3426, without amendments.

On July 16, 2008, the Senate Committee on Appropriations reported its FY2009 Department of State, Foreign Operations and Related Programs appropriations bill, S. 3288. In its bill, the Senate Appropriations Committee met the Administration’s request for funding needed to eliminate the existing 20.89% pay differential over two years.

## **Introduction**

At a time when 55% of U.S. Foreign Service personnel are serving at a hardship and/or danger post, the 110<sup>th</sup> Congress, in its closing days, may choose whether and how to address an issue that both the Department of State and the Foreign Service consider to be a high priority personnel issue — the elimination of a 20.89% pay difference between service in the Washington, D.C. and service abroad for the vast majority of the members of the Foreign Service below the Senior Foreign Service level. The pay difference is the result of federal locality pay laws not covering the salary of federal employees posted abroad. While opponents question the need for a change in the compensation system because of the other allowances and benefits that Foreign Service often get when serving abroad, proponents for the elimination of the pay difference contend that the disparity has negative implications on the morale of the Foreign Service, considerations about overseas assignments, and possibly eventually on retention. Both the Department of State and the American Foreign Service Association (AFSA), the professional association and the recognized

bargaining agent for the Foreign Service, said the elimination of this pay disparity is very important to them.<sup>1</sup>

## **Legislative Background in the 109<sup>th</sup> and 110<sup>th</sup> Congresses**

During the 109<sup>th</sup> Congress, Republican and Democratic leadership of both the House Committee on International Relations and the Senate Committee on Foreign Relations worked to resolve this pay differential issue by developing a proposal called the Foreign Service Compensation Reform. The Administration had agreed to the creation of a new Foreign Service pay compensation system if it were performance-based. This proposal — developed through negotiations among the House and Senate committees, the Administration, and AFSA — would have (1) placed the Foreign Service compensation system on a pay-for-performance (PFP) basis with pay adjustments made only on the basis of performance and not longevity, and (2) eliminated the current pay difference by creating a new worldwide pay structure at the Washington, D.C., salary level over two years.<sup>2</sup> However, reportedly due to concerns among the House floor managers as to whether there was sufficient support for passage,<sup>3</sup> this proposal was not included in the final version of H.R. 6060, the Department of State Authorities Act of 2006, which was originally intended to carry the Foreign Service Compensation Reform proposal and a few other provisions. H.R. 6060 was passed by the House and Senate, and enacted as P.L. 109-472.

For the 110<sup>th</sup> Congress, the Administration, in its FY2009 budget request, urged the enactment of legislation creating a new performance-based compensation system for the Foreign Service along the lines of the 109<sup>th</sup> Congress PFP compromise, and requested the appropriation of \$35.9 million to implement the first of two phases of the new compensation system. On July 16, 2008, the Senate Appropriations Committee reported its FY2009 State Department/Foreign Operations and related programs appropriations legislation, S. 3288. This bill provided sufficient funding levels to meet the Administration's request.

On the same day, the House Committee on Foreign Affairs (HCFA) favorably reported the "Foreign Service Overseas Pay Equity Act of 2008," H.R. 3202, as amended, which, without providing for a performance-based pay system, would eliminate the pay disparity over three years. This bill, which was introduced by Representative Chris Smith and has 29 cosponsors, was referred to both HCFA and

<sup>1</sup> Steve Kashkett, AFSA State Department Vice President, "AFSA Opinion Poll Results Highlight Disturbing Trends," AFSA News, *Foreign Service Journal*, January 2008, pp. 57-61. Of the nearly 11,600 active duty, State Department Foreign Service Officers and Specialists, 4,300 members of the Foreign Service responded to a recent AFSA poll and indicated that 70 percent of the respondents attached "high importance" to correcting the disparity, and 21 percent gave it "medium importance."

<sup>2</sup> For an explanation of the details of the negotiations and the compromise reached in developing the Foreign Service Compensation Reform proposal, see CRS Report RL33721, *The Foreign Service and a new Worldwide Compensation System*, by Kennon H. Nakamura.

<sup>3</sup> Harry K. Thomas, Director General of the Foreign Service, *Wither Efforts to Close the Pay Gap?*, Unclassified State Department cable State-16887, Department of State, December 2007.

HOGR. On August 1, 2008, Senator John Kerry, with five cosponsors, introduced an identical companion bill, S. 3426, which was referred to the SFRC. On September 23, 2008, the SFRC considered and reported S. 3426 without amendments.

## Foreign Service Personnel System<sup>4</sup>

The Foreign Service personnel system, like the Civil Service system, has salary ranges associated with various ranks, and within those ranges there are “step increases” in salary that a person can receive over time, even without a promotion. While the Administration is seeking changes to the personnel system to make it performance-based, Foreign Service personnel believe that its personnel system is already a performance-based system. Members of the Foreign Service point to elements of their personnel system, such as annual promotion reviews by independent promotion panels instead of by one’s supervisor, an “up-or-out” system with specific time limits for promotions, and a mandatory five percent low ranking requirement that can lead to separation from the Service that, they believe, makes it performance-based. Former AFSA President, Ambassador J. Anthony Holmes, said, “The reality is that the present FS personnel system, with its rank-in-person, not in-job, annual evaluations, and competitive up-or-out system is inherently PFP already.”<sup>5</sup>

**Background.** The Foreign Service personnel system, which is separate and quite different from the Civil Service system, was created under the authorities provided by the Foreign Service Act of 1980 (P.L. 96-465; 22 U.S.C. 3901 et seq.). In 2008, there are currently about 11,500 State Department Foreign Service Officers and Specialists,<sup>6</sup> with two-thirds of them serving abroad at over 260 posts and

<sup>4</sup> The discussion of the Foreign Service personnel system is basically a discussion of the State Department’s system, because most of the Foreign Service personnel are from the State Department. All Foreign Service personnel are covered under the Foreign Service Act of 1980 (P.L. 96-465; 22 U.S.C. 3901 et seq.) Sec. 203 of the act, “Compatibility Among Agencies Utilizing the Foreign Service Act Personnel System,” states that agencies utilizing the personnel system established by the Act shall administer their personnel system, to the extent practicable, in a manner that will assure maximum compatibility among the agencies.

<sup>5</sup> J. Anthony Holmes (Amb.), “President’s Views: The Pay-for-Performance/OCP [Overseas Comparability Pay] Trade-Off: Poisoned Chalice or Win-Win,” *Foreign Service Journal*, April 2006, p. 5.

<sup>6</sup> At the Department of State, there are approximately 11,500 Foreign Service Officers and Specialists. Of these, approximately 6,600 are Foreign Service Generalist Officers, and about 4,900 are Foreign Service Specialists. Foreign Service Specialists provide a wide range of services from medical support to computer and communications service at U.S. posts and missions abroad. There are approximately another 1,500 Foreign Service personnel serving in Washington, D.C. and abroad from foreign affairs agencies other than the State Department — Foreign Service Officers and Specialists in the United States Agency for International Development (USAID), Foreign Commercial Service (FCS) Officers at the Department of Commerce, Foreign Agricultural Service (FAS) Officers with the Department of Agriculture, and those with the Broadcasting Board of Governors. Because these Foreign Service personnel from other foreign affairs agencies are also affected by the limitations of Locality Pay adjustments, they too experience the pay difference between service in Washington, D.C. and service abroad. Legislation that would adjust this situation are aimed

(continued...)

missions at any one time. The remaining third is generally posted in Washington, D.C. Typically, members of the Foreign Service spend two-thirds of their careers abroad, serving at each post for one to three years before being assigned elsewhere in the world. Currently, about 55% of Foreign Service personnel are serving in posts designated as hardship and/or danger posts. Members of the Foreign Service cannot spend more than six years at a time serving in domestic assignments. The Director General of the Foreign Service, on a case-by-case basis, may provide a waiver of up to two years if a member of the Service seeks to extend his or her stay in the continental United States beyond six years.

**Ranks and Functions.** Foreign Service personnel carry their rank-in-person as opposed to rank-in-position as the Civil Service generally does. Thus a member of the Foreign Service can advance in rank on the merits of his or her performance, while a member of the Civil Service often can only advance beyond the rank designated for a position by successfully competing for an open position at a higher rank. Grades or ranks within the Foreign Service are divided into two major categories: the Senior Foreign Service (SFS), of which there are about 600 individuals, and the regular Service which is comprised of about 10,500 Officers and Specialists. The SFS is divided into five pay categories and, like the Civil Service Senior Executive Service (SES), requires a presidential appointment into the senior service. The regular Foreign Service is divided into nine ranks or grades with the 01 level the highest. Most Foreign Service Officers enter the Foreign Service at the 05 or 06 levels while some Specialists may enter at lower grades. Generally entering Officers serve for four to five years before being tenured and fully commissioned as Foreign Service Officers, usually at the 04 rank. Generalist Foreign Service Officers are assigned to one of five cones upon entry into the Foreign Service — Political, Economic, Public Diplomacy, Management, and Consular. However, during their career, they will do assignments outside of their cone.

**Promotion System.** The personnel system for the Foreign Service is basically an “up-or-out” system that reviews the members of the Foreign Service annually for promotion unless they have been promoted within the previous year. Promotion panels, each usually consisting of four or five higher grade officers and a public panelist, are formed each year to consider the members of the Foreign Service at ranks of 04 and above for promotion. Those Foreign Service personnel below the 04 rank, who are neither tenured nor commissioned, receive Administrative Promotions at the discretion of the Director General. Promotion panels are generally organized to compare individuals in the same rank and cone. For instance, one promotion panel reviewed 02 political officers and management officers — 160 Management and 240 Political Officers.<sup>7</sup> Criteria or precepts for promotion are negotiated between the Department and the American Foreign Service Association (AFSA), currently the recognized bargaining agent for the Foreign Service.

<sup>6</sup> (...continued)

at amending the Foreign Service Act of 1980, and so would eliminate the pay difference for them also.

<sup>7</sup> David T. Jones and Stephen T. Smith, “Preparing for Promotion Panel Season,” *Foreign Service Journal*, May 2004, pp. 61-64.

Promotion panels begin by reviewing the Employee Evaluation Report files, which can go back five years or to the previous promotion. In most cases, there are fewer available open positions than there are individuals determined to be promotable by the panel. The panel then rank orders those promotable to fill the slots accordingly. After making its promotion decisions, the panel makes its recommendations to the Secretary of State who reviews and forwards them to the Senate. The Senate has the responsibility of approving the promotion lists developed by the promotion panels and recommended by the Secretary of State. Promotion panels are also required to “low-rank” five percent of those reviewed for promotion. The panel then recommends to the Secretary of State whether those individuals should be referred to the Performance Standards Review Board for possible separation from the Service or should be provided a letter for the individual’s file, instructing the individual to take career counseling.<sup>8</sup>

The personnel system has a promotion-required Time-in-Class (TIC) limitation of no more than 10 to 15 years at one grade without a promotion for FS-01 through 04 depending upon the grade, and a seven years limitation at each senior rank for members of the SFS. There is also a Time-in-Service (TIS) limitation of 27 years for appointments to the Senior Foreign Service. If a person exceeds these TIC and TIS limitations, the individual is separated from the Foreign Service.<sup>9</sup> Because of this system, most members of the Foreign Service leave the Service in their mid-50s at an O1 or O2 rank after a full and distinguished career.

## **Impact of Locality Pay Law on Overseas Federal Service**

The Federal Pay Comparability Act of 1990 excludes federal employees posted outside the continental United States from receiving locality pay adjustments.<sup>10</sup> Locality pay is designed to create pay comparability between federal employees and non-federal workers doing the same levels of work within a specific geographic locality in the continental United States.<sup>11</sup> There is no basis for comparison of Foreign Service personnel posted abroad to non-federal workers in the United States. As a result, Foreign Service personnel, who spend about two-thirds of their careers posted abroad, receive less salary when they are posted abroad and less of a career total than their Civil Service counterparts who spend a career in the United States.

<sup>8</sup> See Sec. 231(b), “Expedited Separation Out,” of the Foreign Relations Authorization Act, 1998 and 1999, (P.L. 105-277; 112 Stat. 2681-826).

<sup>9</sup> See TIC and TIS Rules, 3 FAM 6213.3-3 through 6213.3-5; 6213.4 and 6213.5, *Foreign Affairs Manual*, Department of State.

<sup>10</sup> 5 U.S.C. 5304(c)(4)(B), *Locality-based Comparability Pay* states: “Comparability payments shall not be payable for service performed in any position which may not, under subsection (f)(1)(A), be included within a pay locality.” 5 U.S.C. 5304(f)(1)(A) excludes any position area outside the continental United States as a pay locality.

<sup>11</sup> 5 U.S.C. 5304(d)(1)(A) *Locality-based Comparability Pay* states: “compares the rates of pay under the General Schedule...with the rates of pay generally paid to non-federal workers for the same levels of work within each pay locality, as determined on the basis of appropriate surveys that shall be conducted by the Bureau of Labor Statistics.”

Each year since 1990, the difference has increased every year, and by 2008, an individual's salary was 20.89% higher if he/she served in Washington, D.C., as opposed to serving abroad. Proponents of revision to the Foreign Service system indicated that the gap impacts negatively on morale and the assignments system by providing disincentives for overseas tours. They assert that the intent of pay adjustments such as the hardship and danger pay differentials are nullified when locality pay is not counted. They point out that if a person were to go to a 15% hardship post from a Washington, D.C. assignment, he/she would experience a 5.89% decrease in salary.

## **Why Change the Compensation System?**

Both the Administration and the Foreign Service seek to remove the pay difference issue, but they are also motivated by different considerations.

### **Foreign Service Perspective: To Eliminate a Major Pay Difference Affecting the Majority of the Foreign Service**

According to a 2008 AFSA survey, the top legislative issue for members of the Foreign Service is the elimination of the pay disparity that exists between service abroad and service in Washington, D.C., which is where most Foreign Service personnel are domestically assigned.<sup>12</sup> From the perspective of many in the Foreign Service, it is a matter of equity and of a recognition of their work as they serve abroad often in difficult and dangerous conditions.

In 2005, as members of the Senior Foreign Service were reaching retirement, statistics showed they were trying to serve in assignments in the continental United States instead of serving abroad and suffering the loss of pay which could affect their retirement savings. Thus, in 2005, the pay difference was eliminated for those in the Senior Foreign Service. The compensation system for the Senior Foreign Service changed to a formalized pay-for-performance system with adjustments to salary based solely on performance, and the pay levels were brought to the Washington, D.C. salary level regardless of where they were posted.<sup>13</sup>

Supporters of changing the pay system to cover the entire Foreign Service and the Administration both argue that the pay disparity "created an increasing pay disincentive to overseas service," as it did for the Senior Foreign Service prior to 2005.<sup>14</sup> Further, even among the Foreign Service serving at the same post, only mid- and junior-ranked personnel would suffer the pay gap while those in the Senior Foreign Service and those detailed to an embassy would not because the pay difference exists for only those Foreign Service personnel posted abroad who are at the rank of O1 and below..

<sup>12</sup> Steve Kashkett, "AFSA Opinion Poll Results," op cit.

<sup>13</sup> Sec. 402(a), "Salaries of Senior Foreign Service members," of P.L. 96-465, the Foreign Service Act of 1980 (22 U.S.C. 3962(a)).

<sup>14</sup> *Budget in Brief, Fiscal Year 2009*, Department of State, February 2008, p. 26.

A 2006 Government Accountability Office (GAO) study discussing obstacles to attracting mid-level officers to hardship posts also noted the impact of the pay difference as a deterrent to bidding for hardship assignments:

...[O]fficers and State personnel we interviewed both at hardship posts and in Washington, D.C. consistently cited the lack of locality pay as a deterrent to bidding at hardship positions. In 2002, we reported that the differences in the statutes governing domestic locality pay and differential pay for overseas service had created a gap in compensation penalizing overseas employees. This gap grows every year, as domestic locality pay rates increase, creating an ever-increasing financial disincentive for overseas employees to bid on hardship posts. After accounting for domestic locality pay for Washington, D.C., a 25 percent hardship post differential is eroded to approximately 8 percent. As estimated in our 2002 report, differential pay incentives for the 15 percent differential hardship posts are now less than the locality pay for Washington, D.C., which is currently 17 percent and can be expected to soon surpass the 20 percent differential hardship posts.<sup>15</sup>

### **Administration Perspective: To Correct the Pay Difference and Move Another Element of the Federal Service to a Full Pay-for-Performance Personnel System**

The George W. Bush Administration, in its FY2009 budget, requested \$35.9 million for the Department of State to fund the first step of transition to a performance-based system and a global rate of pay for Foreign Service personnel at grades of 01 and below. The Administration seeks to have these changes made in a manner agreed upon during the 109<sup>th</sup> Congress, the “Foreign Service Compensation Reform” proposal.<sup>16</sup> The Administration has made such funding requests since FY2007 “to eliminate longevity-based pay increases and institute a strictly pay-for-performance system similar to that instituted for the Senior Foreign Service in P.L. 108-447.”<sup>17</sup> The proposal would equalize the proposed global rate with equivalent salary levels in Washington, D.C., which includes locality pay.

Over the past few years, the Bush Administration contended that the current GS pay framework is a “failure.” It maintained that the “one size fits all” approach of the GS pay schedule can mask dramatic disparities in the market value of different federal jobs, and uses on-the-job longevity as a substitute for performance.<sup>18</sup> The Administration had once proposed repealing the current GS Schedule by 2010, and replacing it with “a system of occupational pay groups, pay bands within those

<sup>15</sup> U.S. Government Accountability Office, *Department of State: Staffing and Foreign Language Shortfalls Persist Despite Initiatives to Address Gaps*, GAO-06-894, August 2006, p. 22.

<sup>16</sup> See CRS Report RL33721, *The Foreign Service and a new Worldwide Compensation System*, op cit..

<sup>17</sup> Department of State’s *Budget in Brief, Fiscal Year 2009*, op cit.

<sup>18</sup> David McGlinchey, “Bush administration developing government wide personnel reform bill,” GovExec.com, National Journal Group, July 7, 2005.

groups and pay for performance across the federal government. The new system would be a pay-for-performance system.”<sup>19</sup>

At the request of the Administration, Congress developed new structures for civilians working for the Departments of Defense (DOD)<sup>20</sup> and Homeland Security (DHS).<sup>21</sup> These personnel systems were challenged in the courts by federal employee unions, and now the changes are currently being made in only parts of the DOD.

Thus, while agreeing that the Foreign Service pay difference should be eliminated, the Administration continues to urge that these changes should be made in the context of a pay-for-performance basis that would replace the current longevity-based system.<sup>22</sup> Because of the changes in the Congress following the 2006 elections, the drive to move the Civil Service System and the Foreign Service System to being performance-based as envisioned by the Administration, did not achieve majority support in the Congress.

## **Foreign Service Overseas Pay Equity Act of 2008 — Summary of H.R. 3202, as amended, and S. 3426**

**Foreign Service Overseas Pay Equity Act of 2008.** Both H.R. 3202, as amended in the House Foreign Affairs Committee, and S. 3426 are identical in language.

**Sec. 1. Short Title.** “Foreign Service Overseas Pay Equity Act of 2008.”

**Sec. 2. Overseas Comparability Pay Adjustment.** This section adjusts the Foreign Service salary level for ranks of 01 and below who are serving abroad, but not in a non-foreign area,<sup>23</sup> to be comparable to the Washington, D.C. salary level with locality pay. The new salary level with locality pay would be treated in the same manner in terms of taxes and retirement and other benefits as if the individual were serving in Washington, D.C. To reach the full Washington, D.C. salary level with locality pay, the section provides that it shall be accomplished over three years with a one-third increase in each of those three years. Once the overseas salary level is comparable to the Washington, D.C. level with locality pay, the section states that the salary levels shall remain comparable.

<sup>19</sup> Ibid.

<sup>20</sup> See Title XI, “Civilian Personnel Matters — Subtitle A: Department of Defense National Security Personnel System” in P.L. 108-136, the National Defense Authorization Act for Fiscal Year 2004.

<sup>21</sup> See Title VIII Subtitle E, “Human Resources Management,” in P.L. 107-296, *Homeland Security Act of 2002*.

<sup>22</sup> Testimony of Ambassador Harry K. Thomas, Director General of the Foreign Service, *Hearing on Human Capital Issues at the Department of State*, Before the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, July 16, 2008, p. 5.

<sup>23</sup> See 5 U.S.C. 5941 regarding non-foreign areas.

Through the Foreign Relations Authorization Act, Fiscal Year 2003, Congress established a system of computing the annuity of Foreign Service personnel serving abroad to be as if he/she were serving in Washington, D.C. This system, commonly referred to as “Virtual Locality Pay,” was developed so that the individual would not be negatively affected in the annuity computation because of a lower salary that did not include locality pay. However, because the individual serving overseas would have those years computed as if he/she were serving in Washington, that individual’s contribution to the Foreign Service retirement system also would have to be at a level as if the individual were serving in Washington.<sup>24</sup>

The Conforming Amendments of Section 2 make adjustments to the Foreign Service retirement systems by eliminating the “Virtual Locality Pay” system. When the Foreign Service overseas salary level reached the Washington, D.C. level with locality pay, the “Virtual Locality Pay” system would not be required.

The “Virtual Locality Pay” system was instituted because, as the locality pay disparity became larger, it created an incentive for Foreign Service personnel approaching retirement to seek assignment to Washington, D.C. as opposed to going abroad. As a person approached retirement, the lower salary levels received because of the pay disparity for service abroad, would negatively affect annuity computations at a time when a person would want to have the highest salary levels possible. For the Foreign Service, these levels would be achieved by serving in Washington, D.C. An examination of assignment bids among those approaching retirement at that time showed that this was in fact happening. The Conference Report accompanying the legislation explains:

Foreign Service Officers serving overseas do not receive locality pay. Thus, as they near retirement, they have a significant financial incentive to seek assignment to Washington, D.C. This often deprives overseas posts of the more experienced officers. Under this section, an officer, while serving overseas, will have his or her annuity calculated as if he or she were actually receiving locality pay.<sup>25</sup>

**Sec. 3. Death Gratuity.** The Foreign Service Act of 1980 currently authorizes the Secretary of State to provide, at the Secretary’s discretion, a death gratuity to the survivors of any Foreign Service employee who dies as a result of injuries sustained in the performance of the employee’s duty abroad. The amount of the death gratuity is equal to the employee’s annual salary at the time of death. This section amends the current death gratuity provision in two ways:

- The death gratuity is increased for Foreign Service employees who die as a result of injuries sustained in the performance of his/her duty

<sup>24</sup> See Sec. 322, “Computation of Foreign Service Retirement Annuities as if Washington, D.C. Locality-Based Comparability Payments were made to Overseas-Stationed Foreign Service Members,” Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228; 116 Stat. 1383-1385).

<sup>25</sup> See Sec. 322, *House Conference Report 107-671* accompanying H.R. 1646, Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228).

from the equivalent of one year's salary to the salary of a level II of the Executive Schedule.<sup>26</sup>

- A death gratuity is authorized for employees compensated under local compensation plans. The amount of the death gratuity for the individual is equal to the greater of one year's salary at the time of death, or one year's salary at the highest step of the highest grade on the local compensation plan that the employee was under at the time of death.<sup>27</sup>

## Cost of Implementation

On September 17, 2008, the Congressional Budget Office (CBO) issued a cost estimate for the Foreign Service Overseas Pay Equity Act of 2008, H.R. 3202/S. 3426.<sup>28</sup> The Administration, in its February 2008 budget, requested funds to eliminate the pay disparity in two steps, instead of three as proposed by H.R. 3202 and S. 3426. The Administration estimates that it would cost about \$35.9 million in the first year and \$152.9 million (Budget Authority [BA]) to fully eliminate the pay difference.<sup>29</sup>

The CBO estimates that the direct cost of adjusting the pay difference as proposed by H.R. 3202/S. 3426 would be \$148 million in BA or \$126 million in Outlays (O).<sup>30</sup> Because the adjustment would be accomplished over three years, the estimated cost for FY2009 would be \$49 million (BA) or \$42 million (O), which is one-third of the estimated total cost.<sup>31</sup>

The CBO also estimated that the increase in the salary of Foreign Service personnel posted abroad would also "lead to an increase in other benefits paid to

<sup>26</sup> At the time of this writing, the salary level for Executive Schedule II is \$172,200.

<sup>27</sup> This provision, for the first time, authorizes giving a death gratuity to locally hired employees working at a U.S. post or mission abroad. When the U.S. Embassy in Nairobi, Kenya, was bombed in 1998, more than 220 people were killed. Among those killed were 12 American U.S. government employees and family members, and 32 Kenyan national employees of the U.S. government. This type of provision would have authorized giving the survivors of the Kenyan national employees a death gratuity as the American U.S. government employees received.

<sup>28</sup> U.S. Congressional Budget Office, *H.R. 3202, Foreign Service Overseas Pay Equity Act of 2008*, September 17, 2008

<sup>29</sup> Department of State, *Budget in Brief*, op cit.

<sup>30</sup> In a September 23, 2008, telephone conversation with Ms. Sunita D'Monte, the Budget Analyst who prepared the CBO cost estimate regarding H.R. 3202, Ms. D'Monte said that CBO estimates are in Budget Outlay (O) terms and that Outlays are approximately 85 percent of Budget Authority (BA). In its legislation, Congress provides the Budget Authority for an agency to expend or obligate funds for a specific program. Budget Outlays, however, are the actual amounts expended or anticipated to be expended for a specific program within a set time period such as a fiscal year.

<sup>31</sup> U.S. Congress Budget Office, op cit., p. 2.

FSOs, such as life insurance, health insurance, hardship pay, and danger pay.” CBO estimates that in FY2009, this would come to a total cost of \$84 million (BA) or \$72 million (O). Over a five-year period from FY2009 to FY2013, the total cost of both the salary adjustment and the increase in other benefits paid would be \$1.4 billion (BA) or \$1.3 billion (O).<sup>32</sup>

The CBO also estimated that the Section 3 Death Gratuities provision would, based on historical data, be paid less than five times a year. This would be \$588,235 BA or \$500,000 (O) in a year, or a total of \$1 million (O) over five years.<sup>33</sup>

## Issues for Congress

For the past several years, both the Bush Administration and the members of the Foreign Service, through AFSA, have sought to change the compensation system of the regular non-Senior Foreign Service personnel to eliminate the pay disparity between service abroad and service in Washington, D.C. Some members, congressional staff, and others engaged in this discussion also are aware that Foreign Service personnel serving abroad often get allowances and benefits for being abroad. For example, if a member of the Foreign Service were to serve in Mexico City, Mexico, the person would receive a Hardship Differential of 15% of base salary; 20% Cost of Living Allowance (20% of an amount determined by a Mexico City “shopping basket”); an annual Education Allowance for each child; and a Quarters Allowance to cover rent and utilities (the amount for the allowance is based upon the grade of the Foreign Service member). These allowances and benefits can change from post-to-post even within the same country.<sup>34</sup> Further, if the member of the Foreign Service, for personal reasons, goes to the post by him/herself, the family will receive a Separate Maintenance Allowance. These economic questions as well as the questions of equity, recognition of the work of the Foreign Service, impact upon the morale, assignments process, and possibly retention are often weighed against each other as members and their staff consider this issue.

### Is this a pay raise?

Many view this proposed compensation system as a “pay raise” for the Foreign Service and ask why salaries should be increased when Foreign Service personnel already receive so many benefits.

Supporters for the change state that this is not a pay raise, but rather a correction of 14 years of unintended inequity that is growing every year in the overseas compensation for the Foreign Service. They argue that ending this pay difference

<sup>32</sup> Ibid., pp. 2-3.

<sup>33</sup> Ibid., p. 3. CBO estimates a one year total in death gratuities of \$500,000 and a five year total from FY2009-FY2013 of \$1 million. These number could suggest a higher five year total than the \$1 million in the report.

<sup>34</sup> See the Office of Allowances website, Department of State, Washington, D.C. [[http://aoprls.state.gov/Web920/location\\_action.asp?MenuHide=1&CountryCode=1059](http://aoprls.state.gov/Web920/location_action.asp?MenuHide=1&CountryCode=1059)].

would help validate the work the Foreign Service does, including the significant efforts and sacrifices that they and their families make in service to the United States.<sup>35</sup>

## **Is locality pay justified since foreign service already receive many benefits while serving overseas?**

In many posts abroad, Foreign Service personnel receive a post/hardship differential of 5 — 35% of base pay, a cost-of-living allowance, an education allowance for their children, and a housing allowance. These can add significantly to the base salary level. Providing locality pay for those serving abroad would increase the compensation levels. The lack of locality pay is no longer a matter of retirement benefits because the virtual locality pay for retirement computation in current law already takes care of the impact on an annuity. Those who question the need for this change argue that the Foreign Service is already well taken care of when they serve abroad.

Those who support eliminating the pay differential contend that the allowances exist to address specific costs and hardships unique to working for long years overseas:

Danger pay compensates for the extreme risks of living in a country wracked by war, terrorism, political violence or endemic lawlessness. Education allowances make it possible for Foreign Service members to cover their children's education when no viable public schools are available. Cost-of-living allowances help defray the cost of food and other daily needs of life in countries where those things are vastly more expensive than in the United States. These were never meant to obviate the need for the basic locality pay adjustment that all other federal employees get.<sup>36</sup>

## **Since the Foreign Service receives free housing when serving abroad and they often own a home in the United States which they can rent and build equity, should they also get a locality pay equivalent?**

Because one of the biggest benefits that members of the Foreign Service receive is free housing when posted abroad, many believe that this should compensate for any loss derived from the lack of locality pay. These critics point out that if Foreign Service personnel own a home in the United States, they would be able to rent it out while they are gone, and build equity while the government takes care of their living quarters for free. They ask if the locality pay adjustment is really necessary.

<sup>35</sup> The American Foreign Service Association, *Creating Pay Equity: Q & A Discussion Piece*, 2008.

<sup>36</sup> Steve Kashkett, AFSA State Department Vice President, "Overseas Pay Disparity: Debunking the Myths," *Foreign Service Journal*, May 2008, p. 51.

Supporters of the change in the Foreign Service compensation system explain that while the housing abroad is free, members of the Foreign Service are not reaping a financial windfall even when they own a home in the United States. These supporters explain: “Most of our members own a home in the U.S. on which they have to pay a mortgage, upkeep, insurance and property taxes — and renting it out (often impossible) rarely covers all of these expenses and is itself a costly proposition.”<sup>37</sup>

These supporters for eliminating the pay difference also point out that there are often hidden costs to serving overseas that do offset any gain from free housing. Among these is the fact that it is often impossible for the spouse to get employment and a salary equivalent to what could be earned in the United States. Also there are numerous out-of-pocket costs for being overseas. These include travel not covered by authorized visitation basis from distant economically developing nations. This type of travel may include attending the funeral of a family member, going to a family member’s wedding, or graduation, or seeing a family member who is suffering from a life-threatening illness.<sup>38</sup>

### **Should Civil Service employees who are detailed to an embassy be provided a death gratuity equal to that for Foreign Service personnel?**

Critics of the current death gratuity provisions believe the official status of a U.S. government employee working at an embassy should not matter in terms of a death gratuity. The Civil Service employee detailed to an embassy and the Foreign Service member posted to the embassy should both receive the same death gratuity, particularly if either or both died in a similar manner such as the bombing of an embassy. They were both serving the United States.

Supporters of the Foreign Service personnel-only death gratuity provision in the legislation state that there is a difference between the Civil Service employee and the Foreign Service member who dies while detailed at an embassy. For the Civil Service employee, it was a matter of choice. For the Foreign Service Officer, service abroad is a condition of employment. Foreign Service personnel are expected to be “Worldwide Available,” and expected to spend the larger proportion of their career abroad — that is why there are limits on the number of years a member of the Foreign Service can stay continuously in the United States, and why generally a member of the Service spends about two-thirds of his/her career abroad. They point out that when a member of the Foreign Service dies abroad, after a long career outside the United States, the family often does not have the same support structure to help them when they return to the United States as they would have had if they had lived continuously in a community. The death gratuity is intended to help the family transition into a new life.

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<sup>37</sup> Ibid.

<sup>38</sup> Ibid.